Observer-Dispatch, a Division of Gannett Satellite Information Network, Inc. *and* Graphic Communications International Union, Local 259–M, AFL–CIO, CLC. Case 3–CA–21337

August 14, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On November 2, 1999, Administrative Law Judge Thomas R. Wilks issued the attached decision. The Charging Party filed exceptions and a supporting brief, the Respondent filed a brief opposing the exceptions, and the Charging Party filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs,[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted, and the complaint is dismissed.

Robert A. Ellison, Esq., for the General Counsel.
Wendell J. Van Lare, Esq. and *William A. Behan, Esq.,* of Arlington, Virginia, for the Respondent.
Anton G. Hajjar, Esq. (O'Donnell, Schwartz & Anderson, P.C.), of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

THOMAS R. WILKS, Administrative Law Judge. On May 26, 1998, an unfair labor practice charge was filed by Graphic Communications International Union, Local 259–M, AFL–CIO, CLC (the Union) against Gannett Company, Inc., d/b/a Observer–Dispatch, described here by its correct name, Observer–Dispatch, a Division of Gannett Satellite Information Network, Inc. (the Respondent). Thereafter, the Regional Director issued a complaint on March 18, 1999, against the Respondent. The complaint alleged that on February 24, 1998, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit of seven employees to be incorporated in a collective-bargaining agreement covering a bargaining unit of pressroom employees; that on April 13, 1998, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit; that since April 14, 1998, the Union has requested that the Respondent execute a written contract containing that agreement; and that since April 17, 1998, by letter, the Respondent has failed and refused to execute the agreement. The complaint alleges that the refusal to execute the agreement and the withdrawal of recognition constitute violations of Section 8(a)(1) and (5) of the Act.

The Respondent filed a timely answer. In the answer and as argued subsequently, the Respondent denied that any binding contractual obligations had been effectuated on February 24, 1998. The Respondent argues that on February 24, it tendered a final offer in the form of complete typed contract that remained to be accepted on the condition of bargaining unit ratification vote. The Respondent argues that its last offer was not yet accepted by that vote when it withdrew recognition on April 13 because of the interceding receipt of objective evidence of loss of majority status by the Union. The Respondent argues that the Union's subsequent ratification of one retired and two active unit members on April 14 was thus untimely and it was privileged to withdraw recognition, citing *Auciello Iron Workers, Inc. v. NLRB*, 517 U.S. 781 (1996).

The General Counsel alleges that the Respondent's withdrawal of recognition was unlawful only by virtue of the fact that full contractual agreement had been reached and embodied in a written document, which only remained to be signed after the formality of a ratification vote. The General Counsel argues that in the face of that contract agreement, the Respondent could have raised no question concerning representation. The General Counsel does not allege or argue the Respondent's bad-faith reliance on or improper relationship to the evidence of loss of majority status, i.e., an employee vote and subsequent employee petition. Thus, the Respondent's reliance on that evidence of loss of majority status is not in issue. If the Respondent did not unlawfully withdraw recognition in the face of an outstanding obligation to execute an agreed-upon collective-bargaining contract, then it did not otherwise violate the Act under the allegation of this complaint.

The General Counsel and the Union argue that agreement had been reached on a complete contract on February 24, 1998, which was reduced to typed form and remained to be signed pending correction of an inadvertent error in that document and/or ratification by a majority vote of bargaining unit members. They argue that the union negotiators' authority to reach agreement was not subject to a ratification vote, that such vote was an internal union matter and not a precondition to contract agreement.

In issue, therefore, is what occurred in that negotiation meeting of February 24, 1998, and, because of what occurred, was the Respondent precluded from subsequently raising a question concerning majority representation by the Union.

The matter was tried before me on June 22, 1999, at Utica, New York, at which time and place all parties were given opportunity to adduce relevant evidence, to argue orally, and to

[1] The Charging Party has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

submit posttrial briefs, which were received at the Division of Judges on August 4, 1999.

The briefs submitted by the parties fully delineate the facts and issues and, in form, approximate proposed findings of fact and conclusions. Portions of those briefs have been incorporated herein, sometimes modified, particularly as to undisputed factual narration. However, all factual findings here are based on my independent evaluation of the record. Based on the entire record, the briefs, and my observation and evaluation of the witnesses' demeanor, I make the following findings.

FINDINGS OF FACT

I. JURISDICTION

The Observer-Dispatcher is a division of Gannett Satellite Information Network, Inc., which is a Delaware corporation, with a principal place of business in Arlington, Virginia. The Observer-Dispatch is engaged in the publication, circulation, and distribution of a daily newspaper in Utica, New York, with a principal place of business located at 221 Oriskany Plaza, Utica, New York.

During the 12 months preceding the complaint, a representative period, the Observer-Dispatch, in the course and conduct of its business operations, derived gross revenues in excess of $200,000 and has held membership in interstate news services, published nationally syndicated features, and advertised nationally sold products.

It is admitted, and I find, that at all material times, the Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

It is admitted, and I find, that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

It is admitted, and I find, that the following employees of the Respondent, the unit, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent performing press and related work assignments in the Respondent's pressroom, excluding guards and supervisors as defined in the Act.

It is admitted, and I find, that at all material times prior to April 13, 1998, the Respondent recognized the Union as the exclusive collective-bargaining representative of the pressroom bargaining unit, as reflected in successive collective-bargaining agreements, the most recent of which was effective from November 1, 1994, through October 31, 1997.

III. THE UNFAIR LABOR PRACTICES

A. The Facts

The Union represents a seven-person bargaining unit in the pressroom of the Observer-Dispatch newspaper in Utica, New York, and has maintained a series of collective-bargaining contracts for that unit for many years. The Union's most recent contract with the Respondent expired on October 31, 1997. Negotiations for a successor contract began in September 1997. Joe Belleville, union president, and William Clarke, union cotreasurer, negotiated for the Union and invited the bargaining unit members to attend any of the negotiating sessions; several did so, including employee Stephen Lanter. Jim Wessing and Mark Blum were the spokesmen for the Company's negotiating team. The negotiators met approximately five times. The last meeting was held on February 24, 1998.

Only two ground rules were established for negotiations. The first ground rule was that the Respondent's secretary would compare and maintain the official notes of the negotiations. There was no other explicit ground rule agreed on, and no explicit reference was made at the bargaining table until the February 24 meeting.

Belleville, who did not participate in past negotiations, testified in cross-examination that it was his understanding, as expressed by the preceding union president, that the Union's policy was to submit any contract agreed on in negotiations to a ratification vote of the bargaining unit membership.

An August 20, 1990 letter from the Respondent to the then-union president stated in part:

> Based on initial proposal letters and follow up verbal negotiations between the Observer-Dispatch and Local 259M, an agreement, subject to membership vote, has been reached.

In cross-examination, Clarke testified that such agreement "had" to be presented to the membership for a ratification vote, i.e., a majority of those members voting was necessary for ratification. Clarke testified that the Respondent was not notified of any change in such policy in the 1997–1998 negotiations. There is no International union or Local union bylaw or constitutional requirement for a contract ratification vote.

Several proposals by both parties were exchanged during the pre-February 24 negotiations. The Respondent sought, inter alia, the elimination of the union-security clause and modification of overtime computation criteria. The Union sought, inter alia, wage increase, uniform allowances, and modified vacation scheduling.

The local committees were unable to agree on terms for a successor collective-bargaining agreement during the first four sessions. At the conclusion of the fourth session on February 3, 1998, the union representatives stated that they intended to invite an International representative to the next negotiation session. This prompted the Observer-Dispatch to include a representative from Gannett's labor relations department on its committee. In that way, Tom Johnson (GCIU International representative) and Wendell J. Van Lare (vice president and senior labor counsel of Gannett) joined the negotiations during the next session on February 24, 1998.

Several important issues remained unresolved prior to the commencement of the February 24 negotiations. These open issues included the Observer-Dispatch's union-security and overtime proposals and the Union's wage, uniform, and vacation scheduling issues. Belleville viewed the "stalemate" on the union-security issue as the major impediment to agreement.

At the February 24 meeting, employee Lanter was present in a capacity beyond that of mere employee observer. He testified without contradiction that he substituted for the ailing, absent shop steward and, therefore, he considered himself to be a

member of the union committee. More importantly, his special status was either explicitly or implicitly acknowledged by both union and Respondent negotiators because of an employee petition, of sorts, that he retrieved from the shop steward and, with employee Roger Toper, presented to Union Negotiators Clarke and Belleville at a private meeting with them shortly before the February 24 negotiation session. The document, signed by Lanter and three other bargaining unit members, set forth their desire to concede the elimination of the union-security clause as a quid pro quo for (company provided) uniforms, summer vacation scheduling changes, and a "base line pay raise for all press room employees," i.e., an across-the-board general pay raise. The old contract provided for no uniforms and the cost of buying and laundering work clothes was a major concern for pressroom workers.

In addition, the expired agreement did not provide that all employees could take their vacation during summer. As to overtime hours, while the expired agreement provided that unit employees would receive overtime pay for any work beyond the scheduled 7-1/2-hour shift in its initial proposal, the Respondent sought to change this to provide that overtime would only be paid in excess of 37-1/2 hours per week. Finally, regarding wages, the expired agreement contained no general wage increases. Instead, all unit employees were eligible for merit raises on their respective anniversary dates. By virtue of merit increases received during the term of the expired agreement, the journeymen were earning in excess of the standard journeyman pay rate provided for in the agreement. With regard to apprentices, the expired agreement provided that they would receive a percentage of the standard journeyman rate, ranging from 60 percent for first-year apprentices to 90 percent for 4-year apprentices.

What was precisely stated by the negotiators at the February 24 meeting is in dispute. Clarke, Belleville, and Johnson testified for the General Counsel. Later, Van Lare and Blum testified for the Respondent.[1]

All witnesses were subject to some degree of bias. Lanter admitted that he subsequently resigned from the Union and signed a petition to decertify it and no longer desired union representation. However, I found his demeanor to be the most spontaneous and convincing of all witnesses. The union witnesses, particularly Belleville, attempted to characterize anything that emanated from the Respondent at the meeting as an "agreement," whereas the Respondent witnesses used such terms as "final offer" and "tentative agreement."

At the outset of the meeting, Clark described the receipt and contents of the petition submitted to him by Lanter. He thus thrust Lanter and his representation of unit employee demands into a position of priority. The union negotiators clearly now relented in their union-security demands and gave Lanter's representative position preeminent deference. Thus, Lanter became no mere observer.

Van Lare and Blum testified that Van Lare expressed surprise and stated that this put a new light on things and provided good movement and a good beginning after a discussion of the petition demands. Later, Van Lare and Blum testified that the Respondent's negotiators then requested a lengthy caucus, after which they returned and presented a document in a final, full contract format that Van Lare referred to as a contract proposal. The Respondent's prior proposals also had been set forth in the same format. Van Lare testified that he presented it as a contract proposal "as good as it will be," i.e., a final proposal.

The Respondent's negotiators announced that the document that they presented after the caucus eliminated the union-security clause and provided for uniforms, the requested vacation scheduling change, the requested restoration of the former overtime computation provision and, instead of a general pay raise, an increase in the base pay on which apprentice pay is calculated, to be effective in November. However, It erroneously included the Respondent's proposed change in overtime computation.

Thus, according to the Respondent's witnesses, the document was the Respondent's answer, i.e., counteroffer to the Union's revised position.

Clarke's testimony of what was discussed prior to the caucus was cryptic. He testified that Van Lare stated that the Respondent would not accede to an across-the-board pay raise. He subsequently admitted that the document produced after the caucus now provided for the aforesaid scale adjustment. Thus, something new was added and discussed. However, he had inconsistently testified that the document was presented as a written embodiment of what had been agreed to before the caucus. When he identified it at trial, Clarke referred to it as the "contract proposal."

According to Clarke, he pointed out that the document still failed to restore the old overtime criteria and the Respondent quickly admitted that it was due to error and they would retype it. Clarke testified that:

> We looked at Steve Lanter, and we asked him if this is what they're agreeable to after what they had given us, here and he nodded yes. After Wendell had explained to them that they weren't going to give them any more money as long as every six months they got their regular raises [sic]. But they did raise the minimum salary for a week's pay from $522 to $538.

According to Clarke, Van Lare stated that they had an agreement and he, Belleville, and Johnson stated at that point they had an agreement. However, Clarke testified that he also made the statement "that it is normal for us to take it back to the Union and have them ratify the contract which we encourage them to do." In cross-examination, however, when asked about the reason for the reference, he testified that it was because the unit members "are the union." He answered, "That's right" when asked "and they have the final say in whether this is a deal?" However, in cross-examination, when asked the reason for the ratification reference, he testified that ratification was necessary before the union negotiators could sign the contract. Clarke then at least corroborated the testimony of the Respondent's witnesses that there was no agreement of any sort until after the caucus when the Respondent presented its document containing new proposals. According to Clark's admis-

[1] It was stipulated that no adverse inference be raised from the Respondent's failure to adduce cumulative corroborating testimony.

sion, the document did not become an agreement, tentative or absolute, until it was accepted after the postcaucus presentation.

Clarke's shifting and at times inconsistent testimony is inconsistent with that of Belleville and Johnson. Belleville was even more cryptic, but he also was more selective as to his recollection of what was said before and after the caucus. According to him, agreement was quickly reached and the subsequent caucus was utilized merely to permit the Respondent to have typed up in documentary form already fully agreed-upon contractual terms. According to him, when the document was presented after the caucus, it was discovered that the old overtime criteria had not replaced the Respondent's now-abandoned change in computation criteria. Belleville testified that the Respondent offered to retype the agreement then and there but the union representatives wanted to leave as soon as they could because of a raging blizzard outside.

Clarke testified that Van Lare declared "we have an agreement" and that they all shook hands and there was no discussion as to any future action regarding the agreement. Then he recalled that Clarke stated that the document was "fine" but that he would "run it by the membership for ratification."

In cross-examination, Clarke insisted that he testified as to everything he could recall. However, cross-examination revealed that he recalled that other matters were indeed discussed and that his direct examination was highly selective. He now testified that Clarke stated at negotiations that he would "have" to submit the document to a ratification vote. He conceded that the document produced after the proposal contained new counteroffers, and thus contradicted his direct examination.

Clearly, then, the document was a proposal and not merely a typing up of everything previously agreed on orally. Belleville conceded that the membership was free to vote to "accept or reject the terms of the agreement." He explained that it is the Union's practice, in the event of contract rejection by the membership, to attempt to ascertain their objection and possibly to reopen contract negotiation.

In even further cross-examination, Belleville attempted to retract his admission that the Respondent presented specific proposals for wages for the first time after the caucus. In addition to being inconsistent and contradictory, Belleville was also evasive, calculating, and unresponsive. Like Clarke and Johnson, he lacked convincing spontaneity. Belleville's demeanor was exceptionally poor, particularly in cross-examination when it was marked by hesitancy and at times, in critical areas, became nearly inaudible. In redirect examination, he was not reassuring as revealed by this testimony.

> Q. Mr. Belleville, going back to the February 24 meeting, to your knowledge did the Company ever refer to the document that it provided to the Union as a revised proposal?
>
> A. Not that I recall.
>
> Q. To your knowledge, did the Company ever refer to it as a final offer?
>
> A. I believe it was said that, no.
>
> Q. Do you recall any specific words that were used to describe the document?
>
> A. The only words I recall was what Mr. Van Lare said, you know, that if we had agreed to that stuff, we had an agreement.

Despite Belleville's persistent reference throughout his examination to the postcaucus document as a "contract," in his April 14, 1998 letter to Wessing notifying the Respondent of ratification, he referred to it as "your company's final offer." Belleville's testimony was conspicuously silent as to Lanter's participation.

Johnson, like Belleville, characterized the precaucus discussion of February 24 negotiation as a full setting forth of offer and counteroffer and agreement for which a caucus was taken merely to type up a memorialization of the full agreement. He testified that when it was presented they all read the document, noted the error regarding the overtime provision, and Van Lare stated, "We have a deal." Johnson testified that Clarke stated, "well, we have to run this by the members," and then everyone shook hands and departed because of the snowstorm. He, as did Belleville, denied that the word "tentative" was uttered at the meeting. Clarke ultimately conceded that he could neither recall how Van Lare characterized the postcaucus document nor whether he did or did not refer to it as a proposal.

In cross-examination, Johnson testified that he did not consider the postcaucus document to be a proposal despite the fact that he referred to it as such in his contemporaneous bargaining notes. His convoluted explanation for such note reference was disingenuous and unconvincing. He finally claimed he used it "for want of a better word."

In cross-examination, he testified that the Union did not sign the agreement on February 24 because it needed to be corrected. Then he admitted also that a ratification vote was to be taken and that the union members were free "to reject" the agreement in the ratification vote. He testified:

> Q. Okay, would you agree with me, Mr. Johnson, that local 259–M of GCIU cannot accept a contract if the membership has refused to ratify?
>
> A. As far as that statement goes, yes.
>
> Q. At the conclusion of that meeting it was indeed necessary to conduct the ratification vote to find out, to determine if the membership, if the membership would accept or refuse the company's proposal?
>
> A. That's our procedure, yes.
>
> Q. I'm not talking about the usual procedure, I'm talking about at the OD on February 24th.
>
> A. Yes.

In redirect examination, Johnson testified that the Union accepted the Respondent's proposal on February 24. Then, in cross-examination, he testified:

> Q. Mr. Johnson, the acceptance by the union committee of the proposal still left that proposal subject to being refused by the membership, correct?
>
> A. Yes.

Lanter's testimony as to what he said at the postcaucus document production is not contradicted by the selective nor rebuttal recollection of the General Counsel's witnesses. Indeed, as noted above, deference was admittedly made to his approval

before the committee reacted. One of the General Counsel's witnesses testified that he nodded approval. However, in cross-examination, Clarke implied that Lanter did more than nod when he made unexplained referenced to Lanter's vocal participation.

If there is any arguable implied contradiction to Lanter's testimony, I discredit it, as I discredit the testimonies of the General Counsel witnesses Clarke, Johnson, and Belleville, which are inconsistent with the testimony of Lanter, Van Lare, and Blum. The testimony of Clarke, Johnson, and Belleville, as found above, was inconsistent, contradictory, shifting, cryptic, selective, evasive, and accompanied by an unconvincing demeanor. Accordingly, I find the following transpired after the caucus, based on the testimony of Lanter, Van Lare, and Blum.

Van Lare read off the proposals in the document. They were discussed. Lanter independently read the proposal as Van Lare read them off. When Van Lare finished, he asked Lanter directly if they had an agreement. Lanter replied that except for some wording that needed change, he personally had no problem with the proposal. Van Lare agreed to make those changes.[2] Lanter, whom I credit, testified:

> A. Then I made the statement that I wanted to take it back to the rest of the crew, the bargaining unit, and have a vote on it after they had a chance to look over the proposed contract.
>
> Q. Why would you make that statement, Mr. Lanter, that you wanted to take it back to the rest of the people in the unit?
>
> A. Because there are seven people that were in the bargaining unit at the time, and I don't think it's right making a decision for all of them.

Clarke then made the statement that it looked pretty good but he "had" to take the agreement to the membership for a vote. Van Lare asked whether the Respondent could consider that a tentative agreement had been reached and Clarke responded affirmatively that "it looks good" and that they had tentative agreement. Van Lare asked when they would have the ratification vote, and Belleville responded that he would let Van Lare know.

The negotiators made a quick departure at this point to escape the escalating storm. Lanter testified that after the negotiation meeting, he discussed the terms of the February 24 document with four other bargaining unit employees who were primarily concerned about the uniform issue. As to the two employees with whom Lanter did not discuss the contract, he testified that he did approach them but they told him that they had already read a copy of it and gave him their opinion, which he did not disclose in his testimony, but they had no time to discuss it with him.

Clarke testified that he "figured'' that the parties had achieved a contract on February 24 because of an agreement on all terms in the document presented and the promised overtime clause correction. He testified that he went to Wessing 1 week later for the corrected copy, only to discover that it remained in error. Wessing quickly admitted the error to Clarke and promised a corrected copy, which was received by Clarke on about March 24.

Clarke testified, in effect, that he considered the ratification to be a foregone conclusion. He testified that only seven actively employed bargaining unit members would be able to vote.[3] Clarke reasoned that an affirmative vote was a foregoing conclusion because four of those seven eligible voters already obtained what they wanted. This is, however, not accurate as the Respondent's last offer did not acquiesce to everything demanded, i.e., the across-the-board wage demand. Furthermore, as Clarke admitted, if only a single member showed up and voted, he alone could determine the result regardless of the absent members who could very well include the four petition signers. Thus, his presumption of ratification certainty is flawed.

Before responding to that last offer at the February 24 meeting, the focus was placed on Lanter as the representative of those petition signers. His explicit affirmation was solicited either explicitly by the union negotiators or implicitly when Clarke deferred to him for approval. Lanter explicitly deferred final acceptance to the ratification of his coworkers. Clarke, in effect, adopted Lanter's precondition by immediately stating that he "had" to submit the agreement to a ratification vote. Accordingly, the agreement was characterized as "tentative," i.e., an agreement subject to the condition of bargaining-unit member ratification. Thus, regardless of past practice or union policy, the union negotiators on February 24 waived their authority to come to a final agreement by deferring to Lanter's representational capacity and his imposition of the condition of ratification to a final agreement.

Lanter testified without contradiction that a ratification meeting notice on a date prior to April 13 was posted and canceled. Clarke testified that a notice for a contractual vote was posted in the pressroom to occur at the regularly scheduled membership meeting of April 13. When asked in cross-examination, Clarke explained that the lapse of time between February 24 and the ratification vote was due to the fact that he and Belleville were "busy" with other matters. He made no reference to the delay of receiving a corrected copy from the Respondent as a reason. In contradiction to Clarke, Belleville testified that the reason for the delay on the vote was the Union's failure to receive a corrected copy and that he told that to Wessing in late March or early April when Wessing asked him when the Union intended to schedule the ratification vote. According to Clarke, the corrected copy was received on about March 24.

According to Lanter's uncontradicted and credible testimony elicited in cross-examination, the bargaining unit members met among themselves on Saturday, April 11, and voted to reject union representation entirely. Lanter deposited on the same day a copy of their rejection petition in a sealed envelope on Wessing's desk. Wessing was absent and not expected until Monday morning. Lanter did not attend the ratification vote. Lanter and four other bargaining unit employees signed that petition renouncing union representation.

[2] The inadvertent failure to restore the old overtime criteria in the document and the agreement to do so is not disputed.

[3] In fact, only two of three voters were actively employed at the ratification vote. Belleville testified that retirees were able to vote.

By letter dated April 13, signed by Wessing, the Respondent informed Belleville that it was immediately withdrawing recognition of the Union because of the Union's loss of majority status. On the same date, the Respondent informed the bargaining unity employees in writing that it had withdrawn recognition based on the receipt of evidence as to the loss of majority. The letter advised that employee and employer contributions to the union pension fund would cease but that these amounts would be included in their pay and available for participation in the Respondent's 401(k) plan. The employees were informed that uniforms would be provided.

There had been no compliance with the terms of the February 4 document or attempted enforcement of it by the Union. Uniforms were provided by the Respondent to unit employees 2 weeks after the recognition withdrawal. There was no implementation of the proposed change in summer vacation scheduling or the proposed increase in apprentice pay percentage computation. There is no evidence as to whether the Respondent changed the overtime computation formula or retained it as proposed in the February 24 document.

Subsequently, notwithstanding the above, the Union conducted a ratification vote among the one retired and two active unit employees on the evening of April 13, who voted in favor of ratification of the agreement. On April 14, the Union informed the Respondent that the "members present at this meeting voted by a majority vote to accept your Company's final offer of a three (3) year agreement." On April 17, the Respondent replied that it had properly withdrawn recognition prior to the Union's acceptance of the Respondent's final offer and, therefore, prior to the creation of a binding contract.

B. Analysis

The General Counsel accurately sets forth the state of Board law in his argument in the brief as follows:

> In determining whether a binding agreement exists in circumstances where employee ratification is involved, the Board examines whether the parties had an express agreement that ratification was a condition precedent to reaching a binding contract or whether ratification was a self-imposed required [sic] by the union. In circumstances where there is an express agreement on the need for ratification, the Board has generally found that a contract cannot become effective if ratification has occurred. See *Hertz Corp.*, 304 NLRB 469 (1991) and *Beatrice/Hunt Wesson*, 302 NLRB 224 (1991). Thus, an employer under these circumstances need not execute such a contract that has not been ratified.[13] In cases in which a union has self-imposed an internal ratification requirement, the Board has long held that an employer must sign the agreement upon request, regardless of whether or not ratification has taken place. *North Country Motors,* 146 NLRB 671 (1964) [employer ordered to sign agreement even though initially rejected and then approved by a single employee at second vote; *Martin J. Barry Co.*, 241 NLRB 1011 (1979) [employer ordered to sign agreement rejected by first ratification vote but later accepted by a small minority of members]. See also *C & W Lektra Bat Co.*, 209 NLRB 1038 (1974) [employer ordered to sign agreement even though union dispensed with earlier stated intent to obtain ratification where ratification looked impossible[14]]. *Williamhouse-Regency of Delaware*, 297 NLRB 199 (1989) [employer unlawfully refused to execute a contract after the union accepted the employer's offer without obtaining ratification; although the union had informed the employer during negotiations that any agreement would have to be ratified before it became a binding contract, the union's self-imposed limitation of its own authority did not constitute a condition precedent].
>
> . . . .
>
> The Board has, in appropriate in appropriate circumstances, found ratification to be a condition precedent to the formation of a binding agreement on the basis of an express understanding that the union negotiators lacked the authority to bind the union to a contract. For example, in *Sunderland's Inc.*, 194 NLRB 118 (1971), the employer specifically sought to ascertain if the union negotiators had final authority to accept or reject a contract, and the union had only been given authority by the membership to submit the employer's best offer for ratification. Since the negotiators did not have final authority to accept or reject, ratification was made a precondition. Similarly, in *Teledyne Specialty Equipment*, 327 NLRB 928 (1999), the Board concluded that the employer had timely and unlawfully withdrew from a tentative agreement. In that case, the union had informed the employer that it did not have the authority to grant a no-strike pledge, as such authority rested solely with the employees. In these circumstances, ratification was found to be a condition precedent to a binding agreement, where the parties were aware that ratification was required by the union constitution, the union expressly refused to agree to the no-strike provision because it lacked the authority to independently do so, and the draft agreement included that provision.

[13] In his concurring opinion in Beatrice/Hunt Wesson, Chairman Stephens observed that in the case of self-imposed ratification, although an employer may signal its acquiescence, such a response is only a tacit acknowledgement of a precondition that may have to be satisfied before the contract becomes finally effective.

[14] The Board majority, in finding the lack of sufficient basis to establish ratification was a condition precedent, stated, "There is no evidence that the parties agreed in express words to such a condition. We find, rather, on this record, that the Union was merely stating its intention, albeit forcefully, to take any contract reached to the membership for approval. We are unwilling to distort words of intention into words of agreement, particularly where the subject is unrelated to wages and terms and conditions of employment. We regard the words '[w]e demand that we would ratify,' even if said during negotiations by the union, as part of the ambiance of negotiations rather than as a concrete proposed offer for inclusion as a term of the contract.

The General Counsel and the Union argue that there is insufficient credible evidence that the parties either explicitly conditioned their agreement on unit employee ratification or that the union negotiators had limited their authority to agree to the full terms of a collective-bargaining agreement without unit mem-

ber ratification. I disagree. The above findings of fact clearly demonstrate otherwise on both points. The key to the resolution of these issues is the critical event of Lanter's intervention and participation on an express mandate of bargaining unit employees. Lanter's new position and the mandate was recognized and deferred to by the union negotiators. When Lanter expressed personal approval of the Respondent's last offer, he explicitly conditioned acceptance on his coworkers' ratification. Clarke immediately endorsed that condition by asserting that ratification was necessary when asked by Van Lare if they had an agreement. Thus, Clarke and his co-negotiators not only affirmed the conditional acceptance of that last offer but, by endorsing Lanter's response, asserted explicitly enough if n otin precise words that their authority was now limited by Lanter's mandate and his decision as to acceptance or rejection. Thus, the characterization of the agreement as "tentative" becomes meaningful and not merely some verbal gloss by which the Respondent attempted to escape its agreement.

Accordingly, I find that the Respondent's final offer of February 24, 1998, had not been accepted and could not have been accepted until the unit member ratification vote. That vote did not occur until after the Respondent timely and lawfully withdrew recognition. *Auciello Iron Works*, supra.

I, therefore, find that the Respondent did not unlawfully refuse to execute the February 24 document, nor did it unlawfully withdraw recognition because of the existence of a fully agreed-upon contract.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The complaint is dismissed in its entirety.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.